



Rule Fact Sheet–Preliminary Adoption

April 13, 2010

Development of New Rules Concerning Volatile Organic Compounds for Architectural and Industrial Maintenance Coatings

LSA Document #06-604

Overview

This rulemaking proposes to add rule 326 IAC 8-14, architectural and industrial maintenance (AIM) coatings, to the Article 8 volatile organic compound (VOC) rules.

Citations Affected

Adds 326 IAC 8-14.

Affected Persons

This rule applies to any person who supplies, sells, offers for sale, or manufactures any AIM coating for use within the state of Indiana. The rule also applies to any person who solicits the application of any AIM coating within the state of Indiana. Notification of this rule has been sent to interested parties identified during the course of this rulemaking.

Reasons for the Rule

The draft rule is one of a suite of measures recommended by the Lake Michigan Air Directors Consortium (LADCO) to reduce VOC emissions and ozone formation in the upper Midwest and eastern United States. VOCs contribute to the formation of ozone and reducing VOC emissions is necessary in order to meet the United States Environmental Protection Agency's (U.S. EPA) 8-hour ozone National Ambient Air Quality Standard (NAAQS).

Economic Impact of the Rule

The draft rule is based on the Ozone Transport Commission (OTC) 2001 model rule supplemented by regulation of the VOC content in traffic marking coatings consistent with

Wisconsin's traffic markings VOC rule. The OTC is a multi-state organization created under the Clean Air Act that is responsible for developing regional solutions to the ground level ozone problem in the Northeast and mid-Atlantic regions of the U.S. The fiscal analysis for the OTC model rule estimated a cost of approximately \$6,400 per ton of VOC reduced. This cost estimate assumed that all products would have to be reformulated. However, the AIM coatings market is primarily comprised of national and regional manufacturers. The prevalence of existing VOC AIM coatings rules throughout the region and United States demonstrate that much of this transition has already taken place. The VOC content limits in the OTC model rule have been effective in California and the majority of OTC states including Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Virginia since 2005. Additionally, Ohio and Illinois have effective AIM coatings rules requiring that coatings meet the VOC content limits specified in the OTC model rule.

Because of the challenges presented by this rulemaking in quantifying the fiscal impacts for the AIM coatings industry, IDEM cannot definitively state that the rule's impact will be less than \$500,000. Therefore, IDEM prepared the fiscal impact statement required by IC 4-22-2-28 (c) and (e) for this rulemaking.

Benefits of the Rule

This rulemaking will assist Indiana counties in achieving and maintaining the revised 8-hour ozone NAAQS. Once Indiana has an effective AIM coatings rule, the state will be able to receive credits for VOC reductions to assist ozone nonattainment counties in meeting the revised 8-hour ozone NAAQS.

Description of the Rulemaking Project

In 1997, U.S. EPA set the ozone NAAQS at 0.08 parts per million (ppm) with an 8-hour averaging time; however, due to rounding conventions, the standard has effectively been 0.085 ppm. The standard went into effect in 2002. On March 12, 2008, U.S. EPA revised the 8-hour ozone NAAQS to a level of 0.075 ppm. This standard became effective May 27, 2008, but impacts of the new standard will not be realized until 2013, at which time, Indiana is required to submit and implement a plan for areas of nonattainment to meet the revised NAAQS. Additionally, on September 16, 2009, U.S. EPA announced it would reconsider the 2008 NAAQS for ozone. U.S. EPA will issue a final decision by August 31, 2010.

In an effort to assist neighboring states to comply with the federal requirements, LADCO has been working with its member states to identify and recommend regional controls that would help states achieve attainment for the 8-hour ozone NAAQS. This rulemaking regarding regulation of VOCs from AIM coatings is one of LADCO's recommended measures. LADCO states include Illinois, Indiana, Michigan, Ohio, and Wisconsin.

AIM coatings are applied to a variety of surfaces and may be applied by brush, roller, or spray gun. VOC emissions result from the evaporation of solvents in the coatings during application and drying. U.S. EPA published a federal AIM coatings rule on September 11, 1998 (40 CFR Part 59, Subpart D). The federal rule limits the amount of VOC that manufacturers and importers of AIM coatings can put into their products. The federal rule also requires manufacturers to satisfy specific

container labeling requirements. The VOC content limits in the federal rule took effect on September 11, 1999. The federal AIM coatings rule was estimated to yield VOC reductions of 20 percent from the previously uncontrolled levels. However, advances in technology since that time have made lower VOC concentration limits in AIM coatings feasible, while maintaining levels of performance and durability similar to coatings with higher VOC concentration levels. U.S. EPA is currently revising the existing federal AIM coatings rule and the revised federal rule is expected to be based on the OTC model rule.

The OTC published a model rule in 2001 addressing VOC content in AIM coatings as part of an effort to assist northeastern states in meeting and maintaining the 8-hour ozone NAAQS. The model rule includes VOC content limits for more AIM coating categories than the federal rule. In conjunction with the OTC model rule, LADCO recommended implementation of a Wisconsin rule limiting the VOC content of traffic markings. In 2006, LADCO estimated that implementation of the OTC model rule and the Wisconsin traffic marking rule would reduce VOC emissions by approximately 2,986 tons of VOC per year in Indiana.

In this rulemaking, Indiana is proposing to add an AIM coatings rule to the Article 8 VOC rules at 326 IAC 8-14. The proposed rule is based on the OTC model rule and includes standards for AIM coatings, container labeling requirements, recordkeeping and reporting requirements, compliance, and test methods. Additionally, the rulemaking contains VOC content requirements and application standards for traffic marking coatings applicable during the ozone season (May 1 through September 30).

Scheduled Hearings

First Public Hearing: Scheduled for April 13, 2010, at 1:00 p.m. at the Indiana Government Center-South, 402 West Washington Street, Conference Room C, Indianapolis, Indiana.

Second Public Hearing: To be determined.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The new rule is consistent with federal laws, rules and guidance. However, the new rule contains VOC content limits for some coating categories that are not addressed by the federal rule.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/ hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second

public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with Legislative Services.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Amy Smith, Rule and SIP Development Branch, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana), or asmith@idem.in.gov.